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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/822,286	04/12/2004	David Michael Prokop		2976

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EXAMINER

WILLIAMS, MARK A

ART UNIT PAPER NUMBER

3676

DATE MAILED: 03/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/822,286	Applicant(s) PROKOP	
	Examiner Mark A. Williams	Art Unit 3676	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 15 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claims 6, 13, and 20 are objected to because of the following informalities:
“dimensioned for a close fit with the thumb” is improper since the structure of the device cannot depend on any part of a user’s hand. User’s thumb sizes vary widely, so this limitation does not further limit the claims. Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-6 and 15-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Dalury, US Patent 5,692,265. An ergonomic handle comprising a main body portion; and an appendage support member near 5 projecting laterally from the main body portion, the appendage support member comprising a top surface that provides a concave recess 5 wherein a principle axis of the concave

recess passing through a center of curvature and inherently a vertex of the concave recess is substantially perpendicular to and offset from a centerline of the main body portion, and a substantially continuous convex shaped bottom surface near 6 configured to provide a ergonomic support surface for an appendage of a user. The appendage support member accommodates an ergonomic placement of both a distal portion of a first appendage of a hand of a the user adjacent the concave recess of the top surface of the appendage support member and a distal portion of a second appendage of the hand of the user adjacent the substantially continuous convex bottom surface of the appendage support member, wherein upon a grasping of the main body portion by the user, the distal portions of the user's first and second appendages supported by the appendage support member and are capable of being fully offset from the centerline of the main body portion. The concave recess comprises a support surface and peripheral wall portions for accommodating and locating the user's thumb, the peripheral wall portions providing resistance to sliding movement of the thumb relative to the support member. This arrangement is clear from the drawings, particularly figures 1, 3, and 4.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dalury. Dalury does explicitly teach the claimed arrangement of the main body portion comprises a first thin portion near a proximal end of said handle, a second thin portion near a distal end of said handle, and a broad portion between the first and second thin portions, and wherein the broad portion is thicker in cross section than the first and second thin portions, and further wherein the change in the cross sectional thickness between each of the portions is gradual. However, it would have been an obvious matter of design choice to make the different portions of the handle of whatever form or shape was desired or expedient. A change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47. Such a modification is not critical to the design and would have produced no unexpected results. One reason for creating such a form of the handle may be for aesthetic appeal.

5. Claims 8-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dalury in view of McCatty, US Patent 6,502,314. Dalury provides the claimed invention except explicitly teaching the utilization of the handle device in a knife. McCatty shows a knife with an ergonomic design for accommodating a user's thumb and other fingers. It would have been obvious at the time the invention was made for one skilled in the art to use the ergonomic design of Dalury with a knife, for the purpose of gaining the benefits of the ergonomic handle design of Dalury in a knife environment, providing improved comfort.

Regarding claim 14, see the above rejections of claims 7 and 21.

Response to Arguments

6. Applicant's arguments with respect to claims 1-21 have been considered but are moot in view of the new ground(s) of rejection. New art has been applied as outlined above.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.**

See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


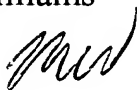
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark A. Williams whose telephone number is (571) 272-7064. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Glessner can be reached on (571) 272-6843. The fax

phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Mark Williams
3/15/06


BRIAN E. GLESSNER
SUPERVISORY PATENT EXAMINER